IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Petition No. 1253 of 2004 (M/S)

1. Aseem Sarakar,
S/o Sri Anata Ram.

2. Uttam Sarakar,
S/o late Sri Anata Ram

Both Resident of Ward No. 6,
Dineshpur,
Distt. Udham Singh Nagar ..……Petitioners

Versus

1. Civil Judge (Senior Division) Rudrapur,
Distt. Udham Singh Nagar.

2. Shiv Dutt Dalakoti
S/o Bal Krishan,
R/o Vill. Chandayan, Tehsil- Gadarpur,
District Udham Singh Nagar …… **Respondents**

Mr. B.S. Khanka, learned counsel for the petitioners.
Mr. Nand Prasad, learned Standing Counsel for respondent No. 1.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the petitioners.

2) By means of this petition, the petitioner has sought mandamus directing the learned trial court to permit them to file the written statement in civil suit No. 9 of 2004.

3) It appears that petitioners were substituted in the civil suit but they failed to file written statement within a period of 30 days, as required under Order VIII Rule 1 of the Code of Civil Procedure, 1908 and there after 60 days time also to expired. As such, the learned trial court refused to extend further time for filing the written statement. In view of the fact that petitioners' father died during the pendency of suit and petitioners were substituted and

served only in May 2004, in the interest of justice, the petitioners /defendants are allowed to file their written statement in the civil suit No. 09 of 2004 before the learned trial court within a period of 15 days from today alongwith affidavit explaining each days delay after the period of 90 days expired (calculating said 90 days from 18.05.2004 on the date when the petitioners were served).

4) The petition is disposed of summarily in terms of the observations made above. In case, the petitioners fails to file the written statement as observed above, the learned trial court shall proceed immediately thereafter treating that no written statement have been filed and no time shall be allowed to the petitioners after the time expires as allowed above.

(Prafulla C. Pant, J.)

Dt.: 1st December, 2004

H. Negi